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Carole Migden, Friends of Carole Migden  
Committee, and Re-Elect Senator Carole  
Migden Committee

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CAROLE MIGDEN, et al.,

Plaintiffs,

vs.

CALIFORNIA FAIR POLITICAL PRACTICES  
COMMISSION, et al.,

Defendants.

) No.: 2:08-CV-00486-EFB  
)

) **SECOND DECLARATION OF**  
) **JAMES C. HARRISON IN SUPPORT**  
) **OF MOTION FOR PRELIMINARY**  
) **INJUNCTION**

) Hearing:  
)

) Date: April 1, 2008  
) Time: 10:00 a.m.  
) Crtrm: 25

(The Honorable Edmund F. Brennan)

**DECLARATION OF JAMES C. HARRISON**

I, James C. Harrison, declare under penalty of perjury as follows:

1. I am a partner at the law firm of Remcho, Johansen & Purcell, LLP, which is counsel to plaintiffs in this action. I represented Senator Migden in connection with a 2006 enforcement action brought against Senator Migden and her 2002 Board of Equalization Committee and her 2004 Senate Committee. Pursuant to a stipulation with the FPPC, which was approved in December 2006, Senator Migden agreed to pay a fine for reporting errors, specifically the committees' failure to file certain disclosure reports. The fine arose out of a routine audit conducted by the FPPC. At no time during the course of its 2006 investigation did the FPPC indicate that Senator Migden had improperly expended surplus funds or tell her that she could not use her existing campaign funds in a future election, notwithstanding the fact that Senator Migden's Assembly Committee reported the funds in 2003, after Senator Migden left the Assembly.

2. In response to the 2006 FPPC audit, Senator Migden hired a professional treasurer and directed the treasurer and me to conduct an internal audit of her campaign committees to ensure that everything was in proper order. We began the review in the Spring of 2007 and discovered other problems that the FPPC audit had failed to identify. Senator Migden directed me to contact the FPPC, disclose the problems we had discovered, and to work with the FPPC to resolve them. I contacted the FPPC's Enforcement Division in early July and disclosed these issues and indicated Senator Migden's desire that we cooperate fully in the FPPC's investigation. Senator Migden also directed us to prepare amended campaign reports to provide an accurate disclosure of her campaign activities.

3. During the course of our negotiations with the FPPC regarding the resolution of this matter, the FPPC took the position for the first time on October 29, 2007 that the funds that Senator Migden had set aside in the Sterling Bank account could not be used for her reelection. Immediately upon receiving the FPPC's letter, we requested that that FPPC treat these funds as they had treated Senator Corbett's funds and permit Senator Migden to use the funds for her future election. The FPPC refused, even though the essential facts of these two cases are the same. Next, we presented the FPPC with a memorandum explaining that section 89519 was unconstitutional and should not be

enforced, but again the FPPC refused to permit Senator Migden to use the funds in her 2008 election. The parties expressly agreed, however, that the other campaign reporting issues could be resolved through a settlement while it was appropriate to resolve the question regarding the use of Senator Migden's pre-Prop. 34 funds through litigation because it involves a pure question of law. Prior to filing this action, therefore, the parties agreed to the essential terms of an agreement to resolve the campaign reporting issues. The parties signed the stipulation on March 17 and the Commission approved it on March 20. This stipulation, which the FPPC had agreed to prior to filing its opposition brief, expressly carves out the issues encompassed in this lawsuit from the scope of the stipulation.

4. Attached as Exhibit A is a true and correct copy of a news report title “Mark Leno unveils first Senate ad” from the Sacramento Bee website on March 14, 2008. On March 14, 2008, I printed a copy from <http://www.sacbee.com/static/weblogs/capitolalertlatest/011123.html>.

5. Attached as Exhibit B is a true and correct copy of a blog entry from Mark Leno titled "Mark Leno Television Ad- 'Fight.'" I printed a copy of the blog entry on March 21, 2008 from <http://www.markleno.com/home/?q=blog>.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and that this declaration was executed on March 21, 2008 at San Leandro, California.

/s/ James Harrison  
JAMES C. HARRISON

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